

SENATE BILL No. 580

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2-18; IC 9-24-18; IC 11-10; IC 22-1-1-22; IC 22-4; IC 22-5; IC 34-28-7; IC 34-30-2-87.3; IC 35-33-8-4; IC 35-43-5; IC 35-44-2-5; IC 35-44-5.

Synopsis: Unauthorized alien matters. Requires the department of correction to: (1) evaluate the citizenship and immigration status of a committed offender; and (2) notify and assist the United States Department of Homeland Security under certain conditions. Provides that the fact that a defendant is a foreign national not lawfully admitted to the United States is a fact relevant to the risk of nonappearance a judicial officer must consider in setting bail. Requires an individual filing a claim for unemployment insurance to provide certain information in person to the department of workforce development. Prohibits an employer from knowingly hiring, after September 30, 2009, an unauthorized alien. Authorizes the attorney general to: (1) investigate a complaint that an employer knowingly employed an unauthorized alien; (2) verify the work authorization of the alleged unauthorized alien with the federal government; (3) notify United States Immigration and Customs Enforcement, local law enforcement agencies, and the department of labor (department) under certain conditions; and (4) maintain certain records of violation orders. Requires the department to initiate administrative proceedings against an employer for knowingly hiring an unauthorized alien. Prohibits the department from initiating a proceeding against an employer that verifies the employment authorization of an employee through the E-Verify program. Establishes an affirmative defense if the employer complied in good faith with the federal employment verification
(Continued next page)

Effective: July 1, 2009.

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January 20, 2009, read first time and referred to Committee on Pensions and Labor.



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requirements. Makes it a Class B misdemeanor to file a complaint, knowing the complaint is false or frivolous, with the attorney general or the department. Prohibits a governmental body from enacting an ordinance, a resolution, a rule, or a policy that prohibits or limits another governmental body from sending, receiving, maintaining, or exchanging information on the citizenship or immigration status of an individual. Allows a person to bring an action to compel a governmental body to comply with the prohibition. Requires a state agency or political subdivision to verify employees through the E-Verify program. Prohibits a state agency or political subdivision from entering into or renewing a public contract for services with a contractor unless the contract requires the contractor to verify employees through the E-Verify program. Provides that: (1) a state agency or political subdivision may terminate a public contract for services under certain conditions regarding the knowing employment or retention of unauthorized aliens; and (2) if a public contract for services is terminated, a contractor is liable for actual damages. Allows a contractor of a public contract for services to terminate a contract with a subcontractor if the subcontractor employs or contracts with unauthorized aliens. Increases penalties for certain crimes. Establishes additional penalties for certain crimes. Makes committing false identity statement a Class A misdemeanor. Makes making or distributing a forged instrument a Class C felony. Makes it a Class C felony for a person to knowingly or intentionally make, with the intent to distribute, a document that is not issued by a government entity and that purports to be a government issued identification. Makes it a: (1) Class A misdemeanor to knowingly or intentionally transport or move; and (2) Class A misdemeanor to knowingly or intentionally conceal, harbor, or shield from detection; an alien, for purposes of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law. Appropriates \$500,000 to the department and \$500,000 to the attorney general from the state general fund for each year of the biennium beginning July 1, 2009, and ending June 30, 2011.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 580

A BILL FOR AN ACT to amend the Indiana Code concerning immigration and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-2-18 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]:

4 **Chapter 18. Citizenship and Immigration Status Information**

5 **Sec. 1. As used in this chapter, "governmental body" has the**
6 **meaning set forth in IC 5-22-2-13.**

7 **Sec. 2. A governmental body may not enact an ordinance, a**
8 **resolution, a rule, or a policy that prohibits or in any way restricts**
9 **another governmental body, including a law enforcement officer**
10 **(as defined under IC 5-2-1-2), a state or local official, or a state or**
11 **local government employee, from taking the following actions with**
12 **regard to information of the citizenship or immigration status,**
13 **lawful or unlawful, of an individual:**

14 **(1) Communicating or cooperating with federal officials.**

15 **(2) Sending to or receiving information from the United States**
16 **Department of Homeland Security.**

17 **(3) Maintaining information.**



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(4) Exchanging information with another federal, state, or local government entity.

Sec. 3. If a governmental body violates this chapter, a person lawfully domiciled in Indiana may bring an action to compel the governmental body to comply with this chapter.

SECTION 2. IC 9-24-18-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) A person, except a person exempted under IC 9-24-1-7, who

~~(1)~~ **knowingly or intentionally** operates a motor vehicle upon a highway and

~~(2)~~ has never received a valid driving license

commits a Class C misdemeanor. **However, the offense is:**

(1) a Class A misdemeanor if the person has a prior unrelated conviction under this section;

(2) a Class D felony if the operation of the motor vehicle results in bodily injury or serious bodily injury; and

(3) a Class C felony if the operation of the motor vehicle results in the death of another person.

(b) In addition to any other penalty imposed for a conviction under this section, the court shall recommend that the person be prohibited from receiving a valid driving license for a fixed period of not less than ninety (90) days and not more than two (2) years.

(c) The court shall specify:

(1) the length of the fixed period of prohibition; and

(2) the date the fixed period of the prohibition begins;

whenever the court makes a recommendation under subsection (b).

(d) The bureau shall, upon receiving a record of conviction of a person upon a charge of operating a motor vehicle while never having received a valid driving license, prohibit the person from receiving a driving license for a fixed period of not less than ninety (90) days and not more than two (2) years. The bureau shall fix this period in accordance with the recommendation of the court that entered the conviction, as provided in subsection (c).

~~(b)~~ **(e) In a prosecution under this section, the burden is on the defendant to prove by a preponderance of the evidence that the defendant had been issued a driving license or permit that was valid at the time of the alleged offense.**

SECTION 3. IC 9-24-18-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. A person who counterfeits or falsely reproduces a driving license with intent to use the license or to permit another person to use the license commits a Class B misdemeanor. **However, the offense is a Class C felony if it**

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1 **is done with the intent to misrepresent citizenship or immigration**
 2 **status.**

3 SECTION 4. IC 11-10-1-2 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A committed
 5 criminal offender shall, within a reasonable time, be evaluated
 6 regarding:

7 (1) ~~his~~ **the offender's** medical, psychological, educational,
 8 vocational, economic and social condition, and history;

9 (2) the circumstances surrounding ~~his~~ **the offender's** present
 10 commitment;

11 (3) ~~his~~ **the offender's** history of criminality; ~~and~~

12 **(4) the citizenship or immigration status of the offender with**
 13 **the United States Department of Homeland Security; and**

14 ~~(4)~~ **(5)** any additional relevant matters.

15 (b) In making the evaluation prescribed in subsection (a), the
 16 department may utilize any presentence report, any presentence
 17 memorandum filed by the offender, any reports of any presentence
 18 physical or mental examination, the record of the sentencing hearing,
 19 or other information forwarded by the sentencing court or other agency,
 20 if that information meets the department's minimum standards for
 21 criminal offender evaluation.

22 (c) If an offender has undergone, within two (2) years before the
 23 date of ~~his~~ **the offender's** commitment, a previous departmental
 24 evaluation under this section, the department may rely on the previous
 25 evaluation and the information used at that time. However, this
 26 subsection does not deprive an offender of the right to a medical and
 27 dental examination under IC 11-10-3.

28 **(d) If the department is unable to verify the citizenship or**
 29 **immigration status of a committed criminal offender, the**
 30 **department shall notify the United States Department of Homeland**
 31 **Security that the citizenship or immigration status of the offender**
 32 **could not be verified. The department shall assist the United States**
 33 **Department of Homeland Security with information leading to the**
 34 **deportation of a committed criminal offender who is unlawfully**
 35 **present in the United States.**

36 SECTION 5. IC 11-10-2-4 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) A committed
 38 offender shall, within a reasonable time, be evaluated regarding:

39 (1) ~~his~~ **the offender's** medical, psychological, educational,
 40 vocational, economic and social condition, and history;

41 (2) the circumstances surrounding ~~his~~ **the offender's** present
 42 commitment;

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(3) ~~his the offender's~~ history of delinquency; ~~and~~
 (4) ~~the citizenship or immigration status of the offender with~~
~~the United States Department of Homeland Security; and~~
 (4) (5) any additional relevant matters.

(b) In making the evaluation prescribed in subsection (a), the department may utilize reports of any precommitment physical or mental examination or other information or records forwarded by the committing court or other agency, if that information meets the department's minimum standards for delinquent offender evaluation.

(c) If a committed offender has undergone, within one (1) year before the date of ~~his the offender's~~ commitment, a previous departmental evaluation under this section, the department may rely on the previous evaluation and the information used at that time. However, this subsection does not deprive an offender of the right to a medical and dental examination under IC 11-10-3.

(d) ~~If the department is unable to verify the citizenship or immigration status of a committed offender, the department shall notify the United States Department of Homeland Security that the citizenship or immigration status of the committed offender could not be verified. The department shall assist the United States Department of Homeland Security with information leading to the deportation of a committed offender who is unlawfully present in the United States.~~

SECTION 6. IC 22-1-1-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 22. (a) ~~The department of labor shall employ a sufficient number of administrative law judges to hear and decide cases initiated by the department under IC 22-5-1.5.~~

(b) ~~An administrative law judge employed by the department is subject to IC 4-21.5.~~

SECTION 7. IC 22-4-14-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. (a) ~~As used in this section, "SAVE program" means the Systematic Alien Verification of Entitlements program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security.~~

(b) For weeks of unemployment occurring subsequent to December 31, 1977, benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who has been lawfully admitted for permanent residence at the time the services are performed, is lawfully present for purposes of performing the services, or otherwise is permanently residing in the United States under color

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of law at the time the services are performed (including an alien who is lawfully present in the United States as a result of the application of the provisions of Section 207, Section 208, or Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1157 through 1158).

(1) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of ~~his~~ **the individual's** alien status may be made except upon a preponderance of the evidence.

(3) Any modifications to the provisions of Section 3304(a)(14) of the Federal Unemployment Tax Act, as provided by P.L.94-566, which specify other conditions or other effective date than stated in this section for the denial of benefits based on services performed by aliens and which are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, shall be considered applicable under this section.

(c) If an individual who applies for benefits is not a citizen or national of the United States, the department shall verify the lawful presence of the individual to determine the individual's eligibility for benefits through the SAVE program. The department shall implement this subsection in accordance with federal law.

SECTION 8. IC 22-4-17-1, AS AMENDED BY P.L.108-2006, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Claims for benefits shall be made in accordance with rules adopted by the department. The department shall adopt reasonable procedures consistent with the provisions of this article for the expediting of the taking of claims of individuals for benefits in instances of mass layoffs by employers, the purpose of which shall be to minimize the amount of time required for such individuals to file claims upon becoming unemployed as the result of such mass layoffs.

(b) Except when the result would be inconsistent with the other provisions of this article, as provided in the rules of the department, the provisions of this article which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(c) Whenever an extended benefit period is to become effective in

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1 this state as a result of a state "on" indicator, or an extended benefit
 2 period is to be terminated in this state as a result of a state "off"
 3 indicator, the commissioner shall make an appropriate public
 4 announcement.

5 (d) Computations required by the provisions of IC 22-4-2-34(e)
 6 shall be made by the department in accordance with regulations
 7 prescribed by the United States Department of Labor.

8 (e) Each employer shall display and maintain in places readily
 9 accessible to all employees posters concerning its regulations and shall
 10 make available to each such individual at the time the individual
 11 becomes unemployed printed benefit rights information furnished by
 12 the department.

13 **(f) To file an initial claim under this chapter, an individual shall**
 14 **provide in person to the department a document that identifies the**
 15 **individual as approved by the department, including a driver's**
 16 **license, birth certificate, or passport.**

17 SECTION 9. IC 22-5-1.5 IS ADDED TO THE INDIANA CODE
 18 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2009]:

20 **Chapter 1.5. Employment of Unauthorized Aliens**

21 **Sec. 1. (a) This chapter applies only to an employee that an**
 22 **employer hires after September 30, 2009.**

23 **(b) Except as provided in subsection (c), this chapter does not**
 24 **apply to the following:**

25 **(1) A public utility (as defined in IC 8-1-2-1(a)) that is subject**
 26 **to regulation by the Indiana utility regulatory commission**
 27 **under IC 8-1-2.**

28 **(2) A hospital licensed under IC 16-21.**

29 **(3) A county hospital organized under IC 16-22.**

30 **(4) A municipal hospital organized under IC 16-23.**

31 **(5) A nonprofit corporation.**

32 **(6) A person who operates a business of transporting**
 33 **emergency patients by ambulance or using a nontransporting**
 34 **emergency medical services vehicle (as defined in**
 35 **IC 16-31-3-0.5).**

36 **(7) A corporation organized under IC 8-1-13.**

37 **(8) A corporation organized under IC 23-17 that is an electric**
 38 **cooperative and that has at least one (1) member that is a**
 39 **corporation organized under IC 8-1-13.**

40 **(c) The definitions in this chapter apply to this subsection. After**
 41 **September 30, 2009, a person listed under subsection (b) shall**
 42 **verify the employment eligibility of each employee of the person**

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through the E-Verify program after hiring the employee.

Sec. 2. As used in this chapter, "agency" means any state or local administration, agency, authority, board, bureau, commission, committee, council, department, division, institution, office, service, or other similar body of government created or established by law that issues a license for purposes of operating a business in Indiana.

Sec. 3. As used in this chapter, "department" means the department of labor.

Sec. 4. As used in this chapter, "employee" means an individual who:

- (1) performs services for an employer; and
- (2) is an individual from whom the employer is required to withhold wages under IC 6-3-4-8 or is an employee described in IC 6-3-4-8(l).

Sec. 5. (a) As used in this chapter, "employer" means a person that:

- (1) transacts business in Indiana;
- (2) has a license issued by an agency; and
- (3) employs one (1) or more individuals who perform employment services in Indiana.

(b) The term includes the state, a political subdivision (as defined in IC 3-5-2-38) of the state, and a self-employed person.

Sec. 6. As used in this chapter, "E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s. 403(a), as amended, operated by the United States Department of Homeland Security, or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

Sec. 7. As used in this chapter, "knowingly" has the meaning set forth in IC 35-41-2-2.

Sec. 8. (a) As used in this chapter, "license" means any agency permit, certificate, approval, registration, charter, or similar authorization that is:

- (1) required by law; and
- (2) issued by an agency;

for purposes of operating a business in Indiana.

(b) The term does not include an occupational or professional

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license.

Sec. 9. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, or another legal entity.

Sec. 10. As used in this chapter, "unauthorized alien" has the meaning set forth in 8 U.S.C. 1324a(h)(3).

Sec. 11. An employer shall not knowingly employ an unauthorized alien.

Sec. 12. (a) The attorney general may investigate a complaint filed with the attorney general that an employer knowingly employed an unauthorized alien in violation of section 11 of this chapter.

(b) In investigating a complaint under subsection (a), the attorney general shall verify the work authorization of the alleged unauthorized alien with the federal government under 8 U.S.C. 1373(c).

(c) A complaint filed with the attorney general under subsection (a) must be:

- (1) in writing; and
- (2) signed by the individual filing the complaint.

Sec. 13. A state, county, or local official or employee may not attempt to make independently a final determination as to whether an individual is authorized to work in the United States.

Sec. 14. If, after an investigation, the attorney general determines that an employer has knowingly employed an unauthorized alien, the attorney general shall notify:

- (1) the United States Immigration and Customs Enforcement;
- (2) local law enforcement agencies; and
- (3) the department.

Sec. 15. (a) If the attorney general notifies the department under section 14 of this chapter that an employer has knowingly employed an unauthorized alien, the department shall initiate an administrative proceeding to determine if the employer has violated section 11 of this chapter.

(b) An administrative hearing under this chapter shall be conducted by an administrative law judge appointed by the department under IC 22-1-1-22.

(c) IC 4-21.5 applies to an administrative proceeding under this section.

(d) The department may initiate only one (1) administrative proceeding against an employer relating to the employment of all unauthorized aliens employed by the employer at a business

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location of the employer at the time the department initiates the administrative proceeding. The department may initiate an additional administrative proceeding against an employer relating to the employment of unauthorized aliens for each business location at which the employer employs unauthorized aliens.

(e) The department may initiate an additional administrative proceeding against an employer under this section for a second or subsequent violation of section 11 of this chapter only for violations allegedly committed by the employer after the employer receives notice that the department has initiated an initial administrative proceeding against the employer relating to the employment of unauthorized aliens at a specific business location under this section.

Sec. 16. If the department initiates an administrative proceeding under section 15 of this chapter, an administrative law judge may hold an administrative hearing and make a determination on an expedited basis.

Sec. 17. Except as provided in sections 19 and 20 of this chapter, if an administrative law judge determines that an employer knowingly employed an unauthorized alien in violation of section 11 of this chapter, the administrative law judge shall do the following:

(1) Order the employer to terminate the employment of all unauthorized aliens employed by the employer.

(2) Place the employer on probation for a three (3) year period. During the probationary period, the employer shall file a quarterly report with the attorney general concerning each new individual the employer hires at the specific business location where the unauthorized alien worked.

(3) Order the employer to file a sworn affidavit signed by the employer with the department within three (3) business days after the order is issued under subdivision (1). The affidavit must include a statement that the employer:

(A) has terminated the employment of all unauthorized aliens; and

(B) will not knowingly employ an unauthorized alien.

Sec. 18. (a) This section applies to all licenses held by an employer:

(1) that are necessary to operate the employer's business at the employer's business location where an unauthorized alien worked; or

(2) if a license is not necessary at the employer's business

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location described in subdivision (1), that are held by the employer for the employer's primary place of business.

(b) If an employer fails to file a sworn affidavit required under section 17(3) of this chapter with the department within three (3) business days after the order requiring the filing of the affidavit is issued, the administrative law judge may order the appropriate agencies to suspend all licenses that are held by the employer. All licenses suspended under this subsection may remain suspended until the employer files a sworn affidavit described under section 17(3) of this chapter with the department.

(c) If the employer subject to an order filed under subsection (b) files a sworn affidavit required under section 17(3) of this chapter, the administrative law judge may order the appropriate agencies to reinstate the employer's suspended licenses.

Sec. 19. If:

(1) an administrative law judge determines that an employer knowingly employed an unauthorized alien in a second violation of section 11 of this chapter; and

(2) the violation referred to in subdivision (1) occurred not later than seven (7) years after the date of the initial violation; the administrative law judge shall order the appropriate agencies to suspend, for at least one (1) but not more than ten (10) business days, all licenses described in section 18(a) of this chapter that are held by the employer.

Sec. 20. (a) If:

(1) an administrative law judge determines that an employer knowingly employed an unauthorized alien in a third violation of section 11 of this chapter; and

(2) the violation referred to in subdivision (1) occurred not later than seven (7) years after the date of the initial violation; the administrative law judge shall order the appropriate agencies to revoke the employer's license or licenses for a period determined by the administrative law judge or permanently revoke all licenses held by the employer that are described in section 18(a) of this chapter.

(b) An employer may petition the governor under IC 4-21.5-3-30 to review an order issued by an administrative law judge revoking the employer's license or licenses.

Sec. 21. The administrative law judge may consider the following factors, if applicable, in deciding whether to order an agency to suspend an employer's license under section 19 of this chapter or revoke an employer's license under section 20 of this

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chapter:

- (1) The number of unauthorized aliens employed by the employer.
- (2) Any prior misconduct by the employer.
- (3) The degree of harm resulting from the violation.
- (4) The extent to which the employer made good faith efforts to comply with any applicable requirements under this chapter.
- (5) The duration of the violation.
- (6) The role of the directors, officers, or agents of the employer in the violation.
- (7) Any other factors the court considers relevant.

Sec. 22. (a) An employer may, after the employer has exhausted all administrative and judicial remedies, request the governor to terminate or reduce the term of revocation of the employer's license or licenses under an order issued by an administrative law judge under section 20 of this chapter.

(b) The governor may terminate or reduce the term of revocation of an employer's license or licenses under an order issued by an administrative law judge under section 20 of this chapter and require the appropriate agency to reinstate the employer's license.

Sec. 23. (a) If an agency receives an order from an administrative law judge under section 18(b) or 19 of this chapter, the agency shall immediately suspend the license or licenses described in section 18(a) of this chapter that are held by the employer to which the order relates.

(b) If an agency receives an order from an administrative law judge under section 20 of this chapter, the agency shall immediately revoke the license or licenses described in section 18(a) of this chapter that are held by the employer to which the order relates.

Sec. 24. An administrative law judge shall send copies of all orders issued under sections 18, 19, and 20 of this chapter to the attorney general.

Sec. 25. (a) In determining whether an individual is an unauthorized alien for purposes of this chapter, an administrative law judge may consider only the federal government's verification or status information provided under 8 U.S.C. 1373(c).

(b) The federal government's verification or status information provided under 8 U.S.C. 1373(c) creates a rebuttable presumption of an individual's lawful status.

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(c) The administrative law judge may:

(1) take judicial notice of the federal government's verification or status information; and

(2) request the federal government to provide automated or testimonial verification under 8 U.S.C. 1373(c).

Sec. 26. The department may not initiate an administrative proceeding against an employer under section 15 of this chapter for knowingly employing an unauthorized alien if the employer verified the employment authorization of the employed individual through the E-Verify program.

Sec. 27. An employer may establish as an affirmative defense against an alleged violation under section 11 of this chapter that the employer complied in good faith with the requirements of 8 U.S.C. 1324a(b).

Sec. 28. The attorney general shall:

(1) maintain copies of orders received under section 24 of this chapter;

(2) make the orders available on the attorney general's Internet web site; and

(3) establish and maintain a data base of the names and addresses of the employers that have a violation under this chapter.

Sec. 29. This chapter does not require an employer to take any action that the employer believes in good faith would violate federal law.

Sec. 30. A person who files a complaint with the attorney general or the department under this chapter, knowing that the complaint is false or frivolous, commits a Class B misdemeanor.

Sec. 31. The suspension or revocation of a license under this chapter does not relieve an employer from an obligation to withhold, collect, or pay income tax on wages paid by the employer to an employee.

Sec. 32. This chapter shall be enforced without regard to race or national origin.

SECTION 10. IC 22-5-1.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter. 1.7. Public Contract for Services; Unauthorized Aliens

Sec. 1. As used in this chapter, "contractor" means a person that has or is attempting to enter into a public contract for services with a state agency or political subdivision.

Sec. 2. As used in this chapter, "E-Verify program" means the

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1 electronic verification of work authorization program of the Illegal
 2 Immigration Reform and Immigration Responsibility Act of 1996
 3 (P.L. 104-208), Division C, Title IV, s. 403(a), as amended, operated
 4 by the United States Department of Homeland Security, or a
 5 successor work authorization program designated by the United
 6 States Department of Homeland Security or other federal agency
 7 authorized to verify the work authorization status of newly hired
 8 employees under the Immigration Reform and Control Act of 1986
 9 (P.L. 99-603).

10 Sec. 3. As used in this chapter, "person" means an individual, a
 11 corporation, a limited liability company, a partnership, or another
 12 legal entity.

13 Sec. 4. As used in this chapter, "political subdivision" has the
 14 meaning set forth in 36-1-2-13.

15 Sec. 5. As used in this chapter, "public contract for services"
 16 means any type of agreement between a state agency or a political
 17 subdivision and a contractor for the procurement of services.

18 Sec. 6. As used in this chapter, "state agency" has the meaning
 19 set forth in IC 4-6-3-1.

20 Sec. 7. As used in this chapter, "subcontractor" means a person
 21 that:

- 22 (1) is a party to a contract with a contractor; and
- 23 (2) provides services for work the contractor is performing
- 24 under a public contract for services.

25 Sec. 8. As used in this chapter, "unauthorized alien" has the
 26 meaning set forth in 8 U.S.C. 1324a(h)(3).

27 Sec. 9. A state agency or political subdivision shall use the
 28 E-Verify program to verify the work eligibility status of all
 29 employees of the state agency or political subdivision hired after
 30 June 30, 2009.

31 Sec. 10. A state agency or political subdivision may not enter
 32 into or renew a public contract for services with a contractor
 33 unless the public contract contains a provision requiring the
 34 contractor to enroll in and verify the work eligibility status of all
 35 newly hired employees through the E-Verify program.

36 Sec. 11. Before a state agency or political subdivision may enter
 37 into a public contract for services with a contractor, the contractor
 38 shall certify in a manner consistent with federal law that the
 39 contractor, at the time of the certification, does not employ or
 40 contract with an unauthorized alien.

41 Sec. 12. (a) A contractor or a subcontractor may not:

- 42 (1) knowingly employ or contract with an unauthorized alien;

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or

(2) retain an employee or contract with a person that the contractor or subcontractor subsequently learns is an unauthorized alien.

(b) If a contractor violates this section, the state agency or political subdivision shall require the contractor to remedy the violation not later than thirty (30) days after the date the state agency or political subdivision notifies the contractor of the violation.

(c) There is a rebuttable presumption that a contractor did not knowingly employ an unauthorized alien if the contractor verified the work eligibility status of the employee through the E-Verify program.

Sec. 13. (a) Except as provided in subsection (b), if the contractor fails to remedy the violation within the thirty (30) day period provided under section 12(b) of this chapter, the state agency or political subdivision shall terminate the public contract for services with the contractor for breach of the public contract for services.

(b) If a contractor employs or contracts with an unauthorized alien but the state agency or political subdivision (whichever the contractor has a public contract for services with) determines that terminating the public contract for services under subsection (a) would be detrimental to the public interest or public property, the state agency or political subdivision may allow the public contract for services to remain in effect until the state agency or political subdivision procures a new contractor.

(c) If a state agency or political subdivision terminates a public contract for services under subsection (a), the contractor shall be liable to the state agency or political subdivision for actual damages.

Sec. 14. A contractor may file an action with a circuit or superior court having jurisdiction in the county to challenge:

(1) a notice of a violation to the contractor under section 12(b) of this chapter not later than twenty (20) days after the contractor receives the notice; or

(2) a termination of a public contract for services under section 13(a) of this chapter not later than twenty (20) days after the state agency or political subdivision terminates the public contract for services with the contractor.

Sec. 15. If a contractor uses a subcontractor, the subcontractor shall certify to the contractor in a manner consistent with federal

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law that the subcontractor, at the time of certification, does not employ or contract with an unauthorized alien.

Sec. 16. A contractor shall maintain on file a certification of a subcontractor under section 15 of this chapter throughout the duration of the term of a contract with the subcontractor.

Sec. 17. (a) If a contractor determines that a subcontractor is in violation of this chapter, the contractor may terminate a contract with the subcontractor for the violation.

(b) A contract terminated under subsection (a) for a violation of this chapter by a subcontractor may not be considered a breach of contract by the contractor or the subcontractor.

(c) A subcontractor may file an action with a circuit or superior court having jurisdiction in the county to challenge a termination of a contract under subsection (a) not later than twenty (20) days after the contractor terminates the contract with the subcontractor.

SECTION 11. IC 34-28-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 7. Offenses Related to Identification Numbers and Documents

Sec. 1. As used in this chapter, "consular identification" means an identification, other than a passport, issued by the government of a foreign state for the purpose of providing consular services in the United States to a national of the foreign state.

Sec. 2. As used in this chapter, "individual taxpayer identification number" means a tax processing number issued by the United States Internal Revenue Service for the purpose of facilitating federal tax reporting by individuals who are not eligible to obtain a federal Social Security number.

Sec. 3. (a) This section does not apply to a law enforcement officer who is presented with a consular identification during the investigation of a crime.

(b) Except as otherwise provided under federal law or to document the foreign nationality of a cardholder, a person who knowingly or intentionally offers in writing, accepts, or records a consular identification for any public purpose commits a Class C infraction. However, the person commits:

(1) a Class B infraction for a second offense; and

(2) a Class A infraction for a third or subsequent offense.

Sec. 4. Except as otherwise provided under law, a person who knowingly or intentionally offers in writing, accepts, or records an

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individual taxpayer identification number as a valid form of identification for any public or private purpose, other than for reporting, payment, or other processing of federal or state personal taxation for which a Social Security number would otherwise be required of a United States citizen, commits a Class C infraction. However, the person commits:

(1) a Class B infraction for a second offense; and

(2) a Class A infraction for a third or subsequent offense.

SECTION 12. IC 34-30-2-87.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 87.3. IC 22-5-1.5-26 (Concerning certain employers that employ unauthorized aliens).**

SECTION 13. IC 35-33-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) The court shall order the amount in which a person charged by an indictment or information is to be held to bail, and the clerk shall enter the order on the order book and indorse the amount on each warrant when issued. If no order fixing the amount of bail has been made, the sheriff shall present the warrant to the judge of an appropriate court of criminal jurisdiction, and the judge shall indorse on the warrant the amount of bail.

(b) Bail may not be set higher than that amount reasonably required to assure the defendant's appearance in court or to assure the physical safety of another person or the community if the court finds by clear and convincing evidence that the defendant poses a risk to the physical safety of another person or the community. In setting and accepting an amount of bail, the judicial officer shall take into account all facts relevant to the risk of nonappearance, including:

- (1) the length and character of the defendant's residence in the community;
- (2) the defendant's employment status and history and his ability to give bail;
- (3) the defendant's family ties and relationships;
- (4) the defendant's character, reputation, habits, and mental condition;
- (5) the defendant's criminal or juvenile record, insofar as it demonstrates instability and a disdain for the court's authority to bring him to trial;
- (6) the defendant's previous record in not responding to court appearances when required or with respect to flight to avoid criminal prosecution;
- (7) the nature and gravity of the offense and the potential penalty

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1 faced, insofar as these factors are relevant to the risk of
2 nonappearance;

3 (8) the source of funds or property to be used to post bail or to pay
4 a premium, insofar as it affects the risk of nonappearance; ~~and~~

5 **(9) that the defendant is a foreign national who has not been**
6 **lawfully admitted to the United States; and**

7 ~~(9)~~ **(10)** any other factors, including any evidence of instability
8 and a disdain for authority, which might indicate that the
9 defendant might not recognize and adhere to the authority of the
10 court to bring him to trial.

11 SECTION 14. IC 35-43-5-2, AS AMENDED BY P.L.106-2006,
12 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2009]: Sec. 2. (a) A person who knowingly or intentionally:

14 (1) makes or utters a written instrument in such a manner that it
15 purports to have been made:

16 (A) by another person;

17 (B) at another time;

18 (C) with different provisions; or

19 (D) by authority of one who did not give authority; or

20 (2) possesses more than one (1) written instrument knowing that
21 the written instruments were made in a manner that they purport
22 to have been made:

23 (A) by another person;

24 (B) at another time;

25 (C) with different provisions; or

26 (D) by authority of one who did not give authority;

27 commits counterfeiting, a Class D felony.

28 **(b) A person who knowingly or intentionally makes or**
29 **distributes more than one (1) written instrument in such a manner**
30 **that the written instrument purports to have been made:**

31 **(1) by another person;**

32 **(2) at another time;**

33 **(3) with different provisions; or**

34 **(4) by authority of one who did not give authority;**

35 **commits making or distributing a forged instrument, a Class C**
36 **felony.**

37 ~~(b)~~ **(c)** A person who, with intent to defraud, makes, utters, or
38 possesses a written instrument in such a manner that it purports to have
39 been made:

40 (1) by another person;

41 (2) at another time;

42 (3) with different provisions; or

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(4) by authority of one who did not give authority;
 commits forgery, a Class C felony.

~~(c)~~ **(d)** This subsection applies to a person who applies for a driver's license (as defined in IC 9-13-2-48). A person who:

(1) knowingly or intentionally uses a false or fictitious name or gives a false or fictitious address in an application for a driver's license or for a renewal or a duplicate of a driver's license; or

(2) knowingly or intentionally makes a false statement or conceals a material fact or otherwise commits fraud in an application for a driver's license;

commits application fraud, a Class D felony.

~~(d)~~ **(e)** This subsection applies to a person who applies for a state identification card (as issued under IC 9-24-16). A person who:

(1) knowingly or intentionally uses false information in an application for an identification card or for a renewal or duplicate of an identification card; or

(2) knowingly or intentionally makes a false statement or otherwise commits fraud in an application for an identification card;

commits application fraud, a Class D felony.

SECTION 15. IC 35-43-5-2.5, AS ADDED BY P.L.109-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.5. **(a)** A person who knowingly or intentionally possesses ~~produces, or distributes~~ a document not issued by a government entity that purports to be a government issued identification commits a Class A misdemeanor.

(b) A person who knowingly or intentionally makes a document that is not issued by a government entity and that purports to be a government issued identification commits a Class D felony.

(c) A person who knowingly or intentionally makes, with the intent to distribute, a document that is not issued by a government entity and that purports to be a government issued identification commits a Class C felony.

SECTION 16. IC 35-43-5-3.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3.6. A person who knowingly or intentionally obtains, possesses, transfers, or uses the identifying information of another person **or uses false or fictitious identifying information** with intent to:

(1) commit terrorism; or

(2) obtain or transport a weapon of mass destruction;

commits terroristic deception, a ~~Class C~~ **Class B** felony.

SECTION 17. IC 35-44-2-5 IS ADDED TO THE INDIANA CODE

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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 5. (a) A person who has knowingly made two (2) or more material statements concerning the person's identity in one (1) or more official proceedings or investigations, with the intent to mislead public servants, which are inconsistent to the degree that one (1) of them is necessarily false, commits false identity statement, a Class A misdemeanor.**

(b) It is a defense to a prosecution under this section that both material statements concerning the person's identity are accurate or were accurate in the past.

(c) In a prosecution under subsection (a) of this section:

(1) the indictment or information need not specify which statement is actually false; and

(2) the falsity of a statement may be established sufficient for conviction, by proof that the defendant made irreconcilably contradictory statements concerning the person's identity.

SECTION 18. IC 35-44-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 5. Offenses Relating to Illegal Aliens

Sec. 1. This chapter does not apply to the following:

(1) A church or religious organization.

(2) The provision of assistance for health care items and services that are necessary for the treatment of an emergency medical condition of an individual.

(3) A health care provider (as defined in IC 16-18-2-163(a)) that is providing health care services.

(4) An attorney or other person that is providing legal services.

(5) A person who:

(A) is a spouse of an alien or who stands in relation of parent or child to an alien; and

(B) would otherwise commit an offense under this chapter with respect to the alien.

Sec. 2. As used in this chapter, "alien" has the meaning set forth in 8 U.S.C. 1101(a).

Sec. 3. Except as provided in section 5 of this chapter, a person who knowingly or intentionally:

(1) transports; or

(2) moves;

an alien, for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the

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1 alien has come to, entered, or remained in the United States in
 2 violation of the law commits transporting an illegal alien, a Class
 3 A misdemeanor.

4 Sec. 4. Except as provided in section 5 of this chapter, a person
 5 who knowingly or intentionally:

6 (1) conceals;

7 (2) harbors; or

8 (3) shields from detection;

9 an alien in any place, including a building or means of
 10 transportation, for the purpose of commercial advantage or
 11 private financial gain, knowing or in reckless disregard of the fact
 12 that the alien has come to, entered, or remained in the United
 13 States in violation of law commits harboring an illegal alien, a
 14 Class A misdemeanor.

15 Sec. 5. (a) Except as provided under subsection (b), an offense
 16 under section 3 or 4 of this chapter is a Class D felony if the:

17 (1) person has a prior unrelated conviction under section 3 or
 18 4 of this chapter; or

19 (2) offense involved more than five (5) aliens.

20 (b) The offense is a Class C felony if the person has a prior
 21 unrelated conviction under this section.

22 Sec. 6. It is a defense to a prosecution under section 4(2) of this
 23 chapter that a landlord, before renting real property to a person,
 24 was provided with a driver's license from any state or other lawful
 25 United States identification, including a Social Security card,
 26 passport, or other unexpired document issued by the federal
 27 government that evidences that the person is authorized to be in
 28 the United States.

29 Sec. 7. A determination by the United States Department of
 30 Homeland Security that an alien has come to, entered, or remained
 31 in the United States in violation of law is evidence that the alien is
 32 in the United States in violation of law.

33 SECTION 19. [EFFECTIVE JULY 1, 2009] (a) There is
 34 appropriated to the attorney general five hundred thousand dollars
 35 (\$500,000) from the state general fund for the attorney general's
 36 use in investigating complaints filed with the attorney general
 37 under IC 22-5-1.5-12, as added by this act, that an employer
 38 knowingly employed an unauthorized alien in violation of
 39 IC 22-5-1.5-11, as added by this act, for the state fiscal year
 40 beginning July 1, 2009, and ending June 30, 2010.

41 (b) There is appropriated to the attorney general five hundred
 42 thousand dollars (\$500,000) from the state general fund for the

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1 attorney general's use in investigating complaints filed with the
 2 attorney general under IC 22-5-1.5-12, as added by this act, that an
 3 employer knowingly employed an unauthorized alien in violation
 4 of IC 22-5-1.5-11, as added by this act, for the state fiscal year
 5 beginning July 1, 2010, and ending June 30, 2011.

6 (c) This SECTION expires July 1, 2011.

7 SECTION 20. [EFFECTIVE JULY 1, 2009] (a) As used in this
 8 SECTION, "department" means the department of labor.

9 (b) There is appropriated to the department five hundred
 10 thousand dollars (\$500,000) from the state general fund for the
 11 department's use in administering IC 22-5-1.5, as added by this act,
 12 for the state fiscal year beginning July 1, 2009, and ending June 30,
 13 2010.

14 (c) There is appropriated to the department five hundred
 15 thousand dollars (\$500,000) from the state general fund for the
 16 department's use in administering IC 22-5-1.5, as added by this act,
 17 for the state fiscal year beginning July 1, 2010, and ending June 30,
 18 2011.

19 (d) This SECTION expires July 1, 2011.

20 SECTION 21. [EFFECTIVE JULY 1, 2009] The department of
 21 labor may initiate an administrative proceeding against an
 22 employer under IC 22-5-1.5-15, as added by this act, only for a
 23 violation of IC 22-5-1.5-11, as added by this act, that occurs after
 24 September 30, 2009.

25 SECTION 22. [EFFECTIVE JULY 1, 2009] IC 35-44-2-5,
 26 IC 35-44-5-4, and IC 35-44-5-5, all as added by this act, and
 27 IC 9-24-18-1, IC 9-24-18-7, IC 35-43-5-2, and IC 35-43-5-3.6, all as
 28 amended by this act, apply only to crimes committed after June 30,
 29 2009.

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